



January 11, 2002

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2002-0198

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#157192.

The City of Friendswood (the "city"), which you represent, received a request for a tape recording of all police department communications on October 11, 2001 from 5 p.m. to 8 p.m. You claim that portions of the responsive tape are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

You have created a log of the tape. You have marked portions of the log of the tape as covered by sections 58.005 and 58.007 of the Family Code. We understand you to represent that these portions of the tape that you marked on the log involve conduct that occurred after September 1, 1997 of a juvenile offender that is a "child" as defined by section 51.02(2). Section 51.02(2) of the Family Code defines "child" for purposes of chapter 58 as "ten years of age or older and under 17 years of age; or seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age." It does not appear that any of the exceptions in section 58.007 apply. Accordingly, portions of the submitted tape you identified and marked on the submitted log are confidential under section 58.007 of the Family Code and thus must be withheld from disclosure under section 552.101 of the Government Code. Because the information is confidential under section 58.007 of the Family Code, we do not address your claim under Family Code section 58.005.

You also contend that driver's license numbers on the submitted tapes must be withheld under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, we agree that you must withhold the Texas driver's license numbers under section 552.130(a) of the Government Code.

In summary, portions of the submitted tape you identified and marked on the submitted log are confidential under section 58.007 of the Family Code and thus must be withheld from disclosure under section 552.101 of the Government Code. Also, Texas driver's license numbers on the submitted tapes must be withheld under section 552.130(a) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 157192

Enc: Submitted documents

c: Mr. Jeff Branscome
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Friendswood, Texas 77546
(w/o enclosures)